

## Key topics and discussion notes from Stakeholder Meeting III

January 27, 2016

3<sup>rd</sup> Floor, Wallace Building

1:00-3:00 PM

1. *To require permanent closure for lined tanks (with no external corrosion protection) when 10% or more of its lining needs repair is stricter than the EPA regulation and could shut down sites where people depend on that service.*
  - a. The IDNR explained that tanks with lining only for corrosion protection were usually lined to cover a perforation.
  - b. The lined only tanks at 41 sites across Iowa are generally smaller, and small tanks have thinner steel than larger tanks, therefore, it takes less time for spot corrosion to perforate a tank.
  - c. External corrosion is more serious than internal corrosion, i.e., external corrosion is much more active compared to internal.
  - d. There are two sites among the 41 where they are the only remaining tanks in town (Logan and Kiron).
2. *To require new owners to pay for late fees is unfair and burdensome. It discourages the sale of the site.*
  - a. The IDNR explained that the buyer becomes responsible for the current compliance issues at the site and late fees are included in that responsibility.
  - b. Prospective buyers of UST sites have a duty and responsibility to conduct due diligence before closing on an UST site: What is the current compliance status? What is the condition of the UST system? Who provided UST service? Is the site currently or was it a LUST site? If it was a LUST site does it have an NAR and certificate? What is the financial responsibility status? Are there fees associated with the purchase, e.g., current and back tank management fees?
  - c. The late fee could be negotiated into the contract if they were not paid.
3. *There was no objection about moving the April 1 deadline date to March 1 after which the late fee becomes effective.*

In other words, we are in agreement that if tank management fees are not paid by March 1 of each year, the late fee is enforced. The March 1 deadline means IDNR should not have to process tank management tags after April 1, which is the date for all tags to be affixed to the fill port.
4. *There was no objection to IDNR adding monthly and annual walkthroughs to its delivery prohibition.*

Reinstatement will include conducting the monthly and annual walkthroughs with an UST professional and submitting documentation to the IDNR.
5. *There was discussion over who could provide monthly and annual walkthroughs.*

Clearly, the EPA's intent was to allow owners and operators to conduct their own monthly and annual walkthroughs, e.g., Class A/B operators. The department will provide sample monthly and annual walkthrough forms/checklists so owners and operators know what is expected. Monthly and annual walkthrough forms must be kept on site for a year, and immediately available for submittal. Owners and operators may conduct as many walkthroughs as they wish, i.e., they are not limited to one per month or per year, but for recording purposes the annual walkthrough inspection should not be conducted within six months of the last walkthrough or no sooner than 28 days of the last monthly walkthrough. In other words, don't perform an annual walkthrough inspection on December 31, 2017 and then the next year's walkthrough on January 1, 2018. Keep both monthly and annual records on site for at least one year.
6. *Do annual walkthrough inspections require the removal/inspection/certification of the ATG probe?*

The inspection/testing of the ATG probe are not part of the annual walkthrough inspection as they require an UST professional trained and certified by the manufacturers. The inspection/certification of the ATG probe is required annually under 135.5(1)"a," Release detection, but is not part of the annual walkthrough inspection. It is expected that this annual inspection/testing of leak detection equipment will be carried out by a licensed UST professional when performing other required annual testing.

**7. *Can an owner conduct the three year testing requirement on the owner's UST system?***

Only if they are UST professionals, i.e., trained and certified by the manufacturers and licensed by the IDNR. Clearly, the three year testing requirement is not as simple as a walkthrough and requires experience in testing and troubleshooting and certification from manufacturers. This requirement is as important to the UST system as annual tightness testing of pressurized lines and function tests of line leak detectors. Manufacturers insist that UST professionals be trained and certified on the equipment they install. This requirement calls for special testing equipment (hydro/vacuum/pressure), personal protective gear, third-party approved testing procedures, manufacturer training, handling and proper disposal of contaminated water, etc.

**8. *The three year retraining cycle for Class A/B operators is acceptable as it is consistent with other states.***

There is a concern about how long funding will last for Class A/B operators as the UST Fund is due to sunset. The UST Fund currently pays for the initial training only for Class A/B operators. Subsequent training must be paid by the individual.

**9. *The October 13, 2018 date for owners and operators to complete the first cycle of testing is too soon. We need more time to prepare.***

*The IDNR agrees that the owners and operators need more time, and propose that the first cycle of testing be completed three years after the State adopts the new regulation.*

**10. *"Multiple" groundwater monitoring wells may be required for UST system closure.***

The department's language is acceptable as follows:

*At some tank and piping closures, a minimum of one monitoring well may not be sufficient to represent a release where it is most likely to be present. An additional groundwater monitoring well or wells may be necessary.*

**11. *To require owners and operators to include inspection of the uncontained dispenser sumps during the monthly walkthroughs is too frequent. Annual walkthroughs are sufficient.***

The department disagrees. Monthly inspection of uncontained dispenser sumps will detect leaks before they become more serious. Dispensers, STP sumps and fill ports are the locations for the most serious leaks and releases with dispensers being the highest.

**12. *Class C operators should not have to retrain annually. Other states require only initial training. Record keeping is the biggest problem.***

The department explained that the importance of the Class C operator is critical in their duties of overseeing the dispensing of flammable and combustible liquids and responding to spills and in some cases emergency conditions. ISU offers free training for Class C operators if cost is a concern. There is also a high turnover among Class C operators, therefore, training must be completed with each new C operator anyway. Remember the Class A/B operator can still train the Class C operators.

**13. *Why must you require permanent closure after 12 months of temporary closure?***

The department has proposed the following for temporary closure [567—135.15(1) in order to be consistent with the State Fire Marshal, Flammable Liquids Division who have adopted the International Fire Code, 2006 edition and NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2003 edition by reference as the rules for motor fuel dispensing facilities and repair garages. Where there is conflict between IFC and NFPA 30A, the IAC applies [661—Chapter 221.4(101) IAC].

*When a tank system is closed for more than twelve months, the owner must permanently close the tank system as required in the State Fire Code [661—221.4(101)] which adopts the International Fire Code (3404.2.13.1.3) by reference as the rules for motor fuel dispensing facilities and repair garages). The department may approve an extension if a variance is obtained from the State Fire Marshal.*

The International Fire Code states:

*3404.2.13.1.3 Out of service for one year. Underground tanks that have been out of service for a period of one year shall be removed from the ground in accordance with Section 3404.2.14 or abandoned in place in accordance with Section 3404.2.13.1.4.*

Therefore, in order to remain in temporary closure longer than 12 months, a variance must be requested and granted from the State Fire Marshal. A variance is a modification or waiver to the requirements of temporary closure. A variance request form is provided by the State Fire Marshal and requires the owner/operator to justify reasons for the variance, e.g., unreasonable hardship. In addition to the variance, the IDNR has its own requirements for USTs remaining temporarily closed: maintain FR, tank management fees, compliance inspection, cathodic protection, monthly and annual walkthroughs. The IDNR is proposing that temporary closure not be extended for more than two years.

Currently, we have 80 temporarily closed sites with 147 tanks. Our records indicate 72 of these sites have been temporarily closed for more than one year.

What is the problem with sites that have been temporarily closed for more than one year?

- Sites may be in foreclosure, and compliance matters such as financial responsibility, compliance inspections and tank management fees are neglected. Extensions of temporary closure are expected to be granted to allow lending institutions time for taking possession and reselling properties.
- Sites claim to have emptied the tanks, but department inspections reveal otherwise.
- In most cases at sites with impressed current cathodic protection, the power company has shut off electrical service and the metal components are unprotected. In these situations the owner has abandoned the site, with no intention of maintaining the UST system.
- After one year of temporary closure, the success of returning a site to retail marketability appears to diminish considerably.
- Returning an UST system to operation after being temporarily closed for over one year can be expensive and complicated. If a buyer calls before the purchase we can help explain the requirements so they know what is expected. But we have had many instances where inexperienced buyers acquire these sites through situations such as auctions or tax sales and are caught unaware of the regulations.
- Temporarily closed tanks are a risk to the environment. In many cases, cleanup languishes because a site has been foreclosed and the potential for a new contamination source remains.
- Of the 72 sites, 48 currently do not have financial responsibility (FR)—a requirement for remaining temporarily closed. What if someone buys a site in temporary closure and the FR has lapsed as well as the eligibility to file a claim? The buyer would not only be paying for the site check, but if sample results reveal contamination above the department's action level, they could also be on the hook for the RBCA assessment.

*14. The proposed regulations requiring impressed current systems to close after one year without power to the rectifier or one year after a repair is unreasonable.*

The department has revised its requirements for impressed current systems that have been inoperative. It makes a distinction between tanks in temporary closure with an inoperative CP system and tanks that have been operating but whose impressed current system has been inoperative. The department gives an option to tanks that have been active but whose CP system has not. The point is, active tanks are viable. See Revisions to Chapter 135.

*15. Will the IDNR develop more specific language to illustrate acceptable methods to document the 10-foot separation between the LNAPL and water lines?*

The proposed regulations 135.7(5)“d”(11) include identifying all water lines within the area of free product as part of the free product assessment--water lines will be considered located within an “area of free product” unless it can be demonstrated that no LNAPL exists within 10 feet (vertically or horizontally) of the water line and the LNAPL is not migrating nor is likely to migrate.

- The DNR is not proposing more specific language in the rule itself as to how to document the 10-foot separation as this could vary depending on site specifics. Rather, we anticipate providing more information on this subject in DNR Guidance Documents.

**16. The IDNR needs to define “UST professional.”**

IDNR agrees a definition is needed. See Revisions to Chapter 135.